

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TOM HUSSEY PHOTOGRAPHY LLC,

Plaintiff,

v.

MYLIO, LLC,

Defendant.

Case No.: 3:23-cv-2150-K

**PLAINTIFF’S RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS**

Pursuant to Local Rule 7.1, Plaintiff Tom Hussey Photography LLC (“THP”) responds to and opposes Defendant Mylio, LLC’s (“Mylio’s”) Motion to Dismiss the Complaint (Document 10).

THP opposes Mylio’s motion to dismiss the Complaint alleging nine copyright infringements on the grounds that (1) Mylio fails to address or meet its burden of proof on its affirmative defense of fair use; (2) Mylio relies solely on contested factual allegations to support its motion, an impermissible basis for a Rule 12(b)(6) motion; and (3) every one of the four statutory factors to be considered in assessing a fair use defense favors THP’s infringement claims, not fair use.

In support of its Opposition, THP relies on the statement of facts, arguments, legal authorities and related citations set forth in its accompanying Plaintiff’s Brief in Support of Its

Opposition to Defendant's Motion to Dismiss and in the accompanying Appendix, the pleadings and papers on file in this action, and such other matters as the Court may consider.

For the reasons stated above and expanded upon in the Brief, the Court should deny Mylio's Motion to Dismiss.

Dated: January 2, 2024

Respectfully submitted,

DUANE MORRIS LLP

/s/ Joakim G. Soederbaum

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 2, 2024.

/s/ Joakim G. Soederbaum_____
Joakim G. Soederbaum